United Nations

Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996

Seventh session (31 March-2 April 2003)

General Assembly
Official Records
Fifty-eighth Session
Supplement No. 37 (A/58/37)

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United Nations • New York, 2003

Note

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[2 April 2003]

Contents

Chapter		*Paragraphs*	*Page*
I.	Introduction	1–7	1
II.	Proceedings	8–15	3
III.	Recommendation	16	4
Annexes			
I.	Informal summary of the general discussion at the plenary meeting held on 31 March 2003, prepared by the Chairman		5
II.	Reports of the coordinators on the results of the informal bilateral consultations		8
	A. Draft comprehensive convention on international terrorism		8
	B. Draft international convention for the suppression of acts of nuclear terrorism		11

Chapter I
Introduction

1. The seventh session of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 was convened in accordance with paragraphs 17 and 18 of General Assembly resolution 57/27 of 19 November 2002. The Committee met at Headquarters from 31 March to 2 April 2003.

2. In accordance with paragraph 9 of General Assembly resolution 51/210, the Ad Hoc Committee was open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency.

3. On behalf of the Secretary-General, the Legal Counsel of the United Nations, Hans Corell, opened the seventh session of the Ad Hoc Committee.

4. At its 27th meeting, on 31 March 2003, the Committee re-elected Rohan Perera (Sri Lanka) as its Chairman. The Chairman informed the Committee that its two Vice-Chairmen elected at the previous session, namely Carlos Fernando Díaz Paniagua (Costa Rica) and Albert Hoffmann (South Africa), were available to act as members of the Bureau at the current session. However, Richard Rowe (Australia) and Volodymyr Krokhmal (Ukraine), the Committee's Vice-Chairman and Rapporteur at the previous session, respectively, were no longer available. The Committee paid tribute to Mr. Rowe and Mr. Krokhmal for their valuable contributions to its work. The Committee then elected Michael Bliss (Australia) as Vice-Chairman and Lublin Dilja (Albania) as the Rapporteur. The Bureau was thus constituted as follows:

Chairman:
Rohan Perera (Sri Lanka)

Vice-Chairmen:
Carlos Fernando Díaz Paniagua (Costa Rica)
Albert Hoffmann (South Africa)
Michael Bliss (Australia)

Rapporteur:
Lublin Dilja (Albania)

5. Václav Mikulka, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Ad Hoc Committee, assisted by Anne Fosty (Deputy Secretary). The Codification Division of the Office of Legal Affairs provided the substantive services for the Ad Hoc Committee.

6. At the same meeting, the Ad Hoc Committee adopted the following agenda (A/AC.252/L.11):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the relevant questions referred to in paragraphs 17 and 18 of General Assembly resolution 57/27 of 19 November 2002, in

accordance with the mandate of the Ad Hoc Committee as set out in that resolution.

6. Adoption of the report.

7. The Ad Hoc Committee had before it the report of its sixth session[1] containing, inter alia, a discussion paper prepared by the Bureau on the preamble and article 1 of the draft comprehensive convention on international terrorism; a list of proposals made during the informal consultations on the preamble and article 1 appended to the report of the coordinator on the results of the informal consultations in the Ad Hoc Committee; the informal texts of articles 2 and 2 bis, prepared by the coordinator; the texts of articles 3 to 17 bis and 20 to 27 prepared by the Friends of the Chairman; two texts of article 18, one circulated by the coordinator for discussion and the other proposed by the States members of the Organization of the Islamic Conference; the report of the Working Group of the Sixth Committee established at the fifty-seventh session of the General Assembly (A/C.6/57/L.9) containing the lists of written amendments and proposals submitted by delegations in connection with the elaboration of a draft comprehensive convention (ibid., annex I, A and B). The Committee also had before it the revised text of a draft international convention for the suppression of acts of nuclear terrorism, proposed by the Friends of the Chairman (A/C.6/53/L.4, annex I), as well as written amendments and proposals submitted by delegations in relation to that instrument.[2]

Chapter II
Proceedings

8. The Ad Hoc Committee held three meetings: the 27th, on 31 March; the 28th, on 1 April; and the 29th, on 2 April 2003.

9. At the 27th meeting, the Ad Hoc Committee held a general exchange of views on issues within its mandate pursuant to paragraphs 17 and 18 of General Assembly resolution 57/27. An informal summary of those discussions, prepared by the Chairman, is contained in annex I to the present report. The informal summary is intended for reference purposes only and not as a record of the discussions.

10. Also at the 27th meeting, the Ad Hoc Committee adopted its work programme. The Chairman appointed the Vice-Chairman, Carlos Fernando Díaz Paniagua (Costa Rica), as the coordinator for the draft comprehensive convention on international terrorism and the Vice-Chairman, Albert Hoffmann (South Africa), as the coordinator for the draft international convention for the suppression of acts of nuclear terrorism. The Chairman also invited interested delegations to approach him on the question of convening a high-level conference, under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Ad Hoc Committee then decided to proceed with discussions in informal bilateral consultations.

11. The informal bilateral consultations were held in two stages. The first, coordinated by Mr. Díaz Paniagua, on 31 March and on 1 April, was devoted to the draft comprehensive convention.

12. In the second stage, the informal bilateral consultations coordinated by Mr. Hoffmann, on 1 April, focused on the outstanding issues pertaining to the draft international convention for the suppression of acts of nuclear terrorism.

13. At the 28th meeting, the coordinators presented their oral reports on the results of the informal bilateral consultations on both the draft comprehensive convention on international terrorism and the draft international convention for the suppression of acts of nuclear terrorism. Those reports are contained in annex II to the present report, for reference purposes only and not as a record of the discussions. The Chairman also informed the Ad Hoc Committee that while he had not been approached by any delegation with a specific proposal regarding the question of convening a high-level conference, it was his understanding that there had been informal contacts on the matter among some delegations. He then urged those delegations to continue to consult informally on the matter in the light of General Assembly resolution 57/27.

14. A view was expressed that, while appreciating the working methods of the Ad Hoc Committee during the current session, informal consultations of the Committee as a whole should take place together with informal bilateral consultations.

15. At its 29th meeting, the Ad Hoc Committee adopted the report of its seventh session.

Chapter III
Recommendation

16. At the 29th meeting, the Ad Hoc Committee, bearing in mind General Assembly resolution 57/27, decided to recommend that the Sixth Committee, at the fifty-eighth session of the General Assembly, consider establishing a working group, if appropriate, to continue the elaboration of a draft comprehensive convention on international terrorism and a draft international convention for the suppression of acts of nuclear terrorism, and keeping on its agenda the question of convening a high-level conference, under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

Notes

[1] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* (A/57/37).

[2] Ibid., annex V, B.

Annex I

Informal summary of the general discussion at the plenary meeting held on 31 March 2003, prepared by the Chairman

1. Delegations reiterated their support for the work of the Ad Hoc Committee. The point was made that political will was necessary to make progress with respect to the issues on the agenda of the Committee. It was also noted that, while United Nations bodies considered the various aspects of the fight against terrorism, the primary responsibility of the Ad Hoc Committee was to act as a law-making body. The delegations were urged to focus on outstanding legal issues before the Committee.

2. In reiterating their condemnation of terrorist acts as criminal and unjustifiable irrespective of their motivation, forms and manifestations, several delegations stressed that national and international efforts to combat terrorism must be taken with full respect for the rule of law, human rights and fundamental freedoms as defined in the relevant international instruments and, where applicable, international humanitarian law. The view was also expressed that, in the light of recent developments, particular attention should be given to the balance between anti-terrorist measures and the observance of human rights standards.

3. Delegations expressed interest in cooperating more actively and closely towards the common goal of combating terrorism. However, it was stated that international cooperation in combating terrorism should be in accordance with international law, the Charter of the United Nations and the relevant international conventions and based on the sovereignty of all States. Furthermore, it was observed that it would be impossible to eliminate terrorism if some terrorist acts were condemned while others were tolerated.

4. With reference to the existing legal framework in the field of counter-terrorism, some delegations referred to the successful elaboration of the anti-terrorism instruments based on the sectoral approach. An appeal was made to States which had not yet done so to become parties to those instruments as soon as possible.

5. Other delegations took the view that the comprehensive convention should be elaborated as a matter of urgency to eliminate shortcomings in the existing legal regime. Some delegations stated that, in order to be effective, the comprehensive anti-terrorism regime had to address the root causes of terrorism, aim at enhancing the protection of the environment as well as define terrorism, to distinguish it from the legitimate struggle of peoples against foreign occupation and alien domination. Reference was also made in that connection to the Final Document of the Thirteenth Summit of the Non-Aligned Movement, held in Kuala Lumpur, from 20 to 25 February 2003.

6. Several delegations stressed the need for concerted global action as well as effective national preparedness in the fight against terrorism. Support was expressed for the work of the Security Council and its Counter-Terrorism Committee in that regard, in particular their monitoring to ensure universal and full implementation of Security Council resolution 1373 (2001). They also welcomed the Security Council's ministerial meeting of 20 January 2003 on combating terrorism, which reaffirmed the importance of technical assistance to States in order to improve their

capacity to prevent and fight terrorism, as well as the special meeting of the Counter-Terrorism Committee of 6 March 2003, which had brought together the representatives of all international, regional and subregional organizations with counter-terrorism programmes, with the aim of ensuring that those organizations acted in concert in the struggle against terrorism.

7. Some delegations referred to instances of acts of terrorism in their countries. They also recalled various initiatives at the regional and national levels to combat terrorism. Reference was made to a proposal to elaborate within the auspices of the United Nations a global code of conduct on combating terrorism. Recent ratifications of the counter-terrorism instruments by certain States were mentioned.

A. Elaboration of a draft comprehensive convention on international terrorism

8. Support was expressed for the early conclusion by consensus of the negotiations on the draft comprehensive convention on international terrorism. It was stated that, as acts of terrorism continued to occur worldwide, the adoption of the comprehensive convention would send a strong signal that the international community was united and determined in its efforts to eliminate this scourge. Delegations were urged to make compromises in order to expeditiously resolve the outstanding issues, namely in the preamble and articles 1, 2, 2 bis and 18 of the draft comprehensive convention.

9. Several delegations reiterated their views that a comprehensive convention should contain a clear definition of terrorism and distinguish it from the legitimate struggle of peoples against foreign occupation. Furthermore, some delegations held the view that, while a convention would play an important role in the prevention and deterrence of terrorism, it would not be effective unless the root causes of terrorism were addressed. It was also noted that, in order to make progress in its work, the Ad Hoc Committee had to address all the forms and manifestations of terrorism, including the concept of State terrorism.

10. While supporting the earliest conclusion of the comprehensive convention, a view was expressed that such support could not be extended at any cost. It was stated that considerable compromise had already been made with respect to the text of the draft convention, in particular its article 18. Any further concessions would compromise the essential grounds on which the convention should be based.

11. On the question of the relationship between the draft convention and sectoral conventions, several delegations reiterated their view that the draft comprehensive convention should not supersede or override the sectoral instruments but rather add value by filling the gaps in the latter.

B. Elaboration of a draft international convention for the suppression of acts of nuclear terrorism

12. Some delegations stated that the adoption of a convention for the suppression of acts of nuclear terrorism was a pressing and urgent need in view of the risk posed should certain terrorist groups gain access to weapons of mass destruction. While stressing that the total elimination of nuclear weapons should be an ultimate goal of

the international community, some delegations stated that the adoption of the convention would constitute a step towards eliminating a nuclear threat. Support was expressed for advancing the work with respect to a draft text before the Ad Hoc Committee.

C. Question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations

13. Several delegations expressed their readiness to discuss the question of convening a high-level conference after the conclusion of the work on the comprehensive convention and insofar as such a conference could lead to a strengthening of the international cooperation in combating terrorism. Other delegations reaffirmed the need to convene a high-level conference to elaborate a definition of international terrorism that would distinguish it from the struggle of peoples under foreign occupation for liberation and self-determination.

Annex II

Reports of the coordinators on the results of the informal bilateral consultations

A. Draft comprehensive convention on international terrorism

1. On 31 March and on 1 April, as coordinator on the draft comprehensive convention on terrorism, I held several rounds of informal consultations with both individuals and groups of delegations. In the consultations, which focused mainly on articles 18 and 2 bis of the draft comprehensive convention, I sought the views of delegations on their current thinking and positions on those articles with a view to determining whether differences on the outstanding issues could be further narrowed. Most of the discussion focused on the acceptability of texts developed previously as contained in the 2002 report of the Ad Hoc Committee[a] as read with the report of the Working Group of the Sixth Committee (A/C.6/57/L.9).

2. Delegations consulted expressed their commitment to remaining engaged in efforts aimed at finding acceptable solutions to the draft convention. They underlined the compromises reached and the important concessions made to date. Some noted that their bottom-line positions might have already been reached, and stressed the extent to which further progress depended on the political will of all sides to compromise. The impact of political developments and the underlying political context in which the negotiations were conducted was also highlighted. It was noted that the convention would have some added value that would enhance the existing framework of international conventions on the suppression of international terrorism. In that connection, it was observed that a completed convention, with a clear definition of terrorism, could complement and guide the work of the Security Council Committee established pursuant to resolution 1373 (2001) (Counter-Terrorism Committee). At the same time, the comment was made that a draft convention without a definition of terrorism was better than a convention with an unsatisfactory definition.

3. While several delegations reiterated the importance of proceeding on the basis of a "package", it was clear that a solution to article 18 remained critical to any agreement on such a package. Several delegations reserved the right to revert to proposals made previously in the event of failure to achieve a package deal.

Article 18

4. Delegations clearly indicated that article 18 was key to the resolution of outstanding issues concerning the draft convention. In one view, the article was the sole remaining outstanding issue on which the adoption of the draft convention hinged. Some delegations expressed their preference for the text prepared by the previous coordinator at the end of the October 2001 session of the Working Group of the Sixth Committee, while others expressed their preference for the proposal by the States members of the Organization of the Islamic Conference (OIC).[b] All delegations noted the important concessions already made on the topic. Some characterized their preferred option as coming close to their bottom-line positions, while others expressed their readiness to explore possibilities of finding some compromise around the various paragraphs of the two proposals.

5. Paragraphs 2 and 3 of the two proposals elicited most comments. For some, the reference to the activities of "armed forces" during armed conflict was considered too narrow in scope and as excluding other participants whose activities in an armed conflict situation were also governed by international humanitarian law. The draft comprehensive convention was perceived not only as a law enforcement instrument but also as a codification convention. For other delegations, the reference to the activities of "the parties" during armed conflict, including in situations of foreign occupation, was overly broad in scope, inappropriate for a law enforcement instrument and could be construed as sanctioning terrorism.

6. It was noted that paragraph 3 of the previous coordinator's text was not intended to condone impunity by the military forces of a State. For some, the phrase "inasmuch as they are in conformity with international law" included in the OIC proposal effectively covered as terrorist under the draft convention any act which would otherwise be a violation of international law under, for example, the Genocide or the Torture conventions or as a grave breach of the Geneva Conventions. On the other hand, it was observed that the focus of the phrase was on individuals who must act in accordance with international law and not on the responsibility of a State under international law.

Article 2 bis

7. The technical character of article 2 bis was recognized by delegations. The point was made that, literally interpreted, the article was restrictive, and not consonant with the regime under the Vienna Convention on the Law of Treaties. Other delegations, proceeding on the basis that the draft comprehensive convention was intended to fill gaps in the existing legal regime, pointed out that the draft convention created a separate and autonomous regime which would be applicable in parallel with the various sectoral conventions. Consequently, any provision, if at all required, should focus particularly on addressing situations where there would be conflict of laws or situations which had the potential of giving rise to different interpretations.

8. Although some delegations were not entirely satisfied with the current formulation, they were willing to work on that basis and improve on the language. For example, it was suggested that some language could be employed to indicate that the sectoral convention would apply "in case of conflict" or could cover situations where the sectoral convention was silent or did not contain a specific provision.

9. Other delegations, while accepting the underlying premise that the draft convention was intended to fill gaps, stressed the importance of preserving the existing legal framework of sectoral conventions. On that account, article 2 bis was more a savings clause than a provision that aimed at altering the import of the Vienna Convention on the Law of Treaties. It was noted that potential problems with the Vienna Convention could be avoided if article 2 bis was interpreted with special focus on "a specific category of terrorist offence".

10. Some delegations noted that the article was widely supported and that any change to it would unravel the emerging package deal. Those delegations attached importance to a clear and unambiguous provision on the relationship between the comprehensive convention and the sectoral conventions.

11. Some delegations expressed the view that their position on the relationship clause would depend on the content of article 18.

Article 2

12. Those delegations that commented on article 2 noted that it was largely acceptable and should not be changed. Some noted that it provided a satisfactory workable definition of terrorist offences. A suggestion was made that paragraph 1 (b) and (c) could be combined and that the reference to serious damage to the environment could be deleted.

13. Some delegations noted that previous proposals made on article 2 were still on the table awaiting a satisfactory outcome of the negotiations on article 18.

Preamble

14. Some delegations reiterated the need to deal with underlying causes of terrorism on the basis of the preambular formulation contained in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.[c] Others noted that currently the preamble[d] was sufficient.

Conclusions

15. I wish to thank all delegations for their cooperation and for participating constructively in the discussions related to the draft comprehensive convention. The fact that delegations expressed a willingness to continue to explore possibilities for acceptable solutions offers a window of opportunity for future consultations that would eventually produce a result acceptable to all.

16. The informal consultations were a useful tool for increasing the understanding of the positions of delegations on the outstanding issues. Delegations have focused their positions on the truly fundamental issues and have expressed flexibility on the accessory ones. In the coordinator's assessment, the key issue is article 18. If agreement were to be found on that article, solutions could be reached on the other issues.

17. Furthermore, it seemed to the coordinator that the language of current article 2 bis might benefit from further discussions as to its actual scope with a view to a possible fine-tuning of the language, as appropriate.

B. Draft international convention for the suppression of acts of nuclear terrorism

1. As coordinator on the draft comprehensive convention for the suppression of acts of nuclear terrorism, I held several rounds of informal consultations with individual delegations on 1 April 2003. The consultations focused on the revised text proposed by the Friends of the Chairman in October 1998,[e] which was based on a draft text presented by the Russian Federation.

2. As in previous sessions of the Ad Hoc Committee and the Working Group of the Sixth Committee, the aim of the consultations was to review the situation in relation to the outstanding issues and to ascertain if there was a possibility of resolving differences.

3. It should be noted that the principal outstanding issue relates to the scope of application of the draft convention (draft article 4) and that the positions on this issue were well known.

4. The only proposal on the table relating to this issue, other than the current text of article 4 of the draft convention, is that submitted by Mexico,[f] which was considered during previous sessions of the Ad Hoc Committee and the Working Group of the Sixth Committee.

5. The point was reiterated that the current text of article 4 of the draft convention should be retained since it stated that regimes other than the one to be established by the convention existed and would be applicable to the activities of the armed forces of States. Moreover, an informal suggestion was made to clarify the relation between the draft convention and State activities involving nuclear materials or weapons.

6. Some delegations supported the Mexican proposal as the best means of achieving consensus. According to another view, although the current text in article 4 of the draft convention was preferable, the proposal by Mexico for a new paragraph to be included in that article could constitute a possible compromise in addressing the concerns which had been expressed on the "armed forces of States" exclusion issue in relation to the article.

7. Other delegations held the view that the proposal by Mexico would not be acceptable since the scope of the convention should include the activities of the armed forces of States; it was noted in that regard that there were practical concerns about the application of the separate regimes previously referred to.

8. The point was made that it was preferable to focus on reaching an agreement on the draft comprehensive convention since resolving those issues might be conducive to finalizing the convention for the suppression of acts of nuclear terrorism.

9. Reference was also made to the process in Vienna to draft a protocol to the 1979 Convention on the Physical Protection of Nuclear Material. In that regard, it was noted that the text of the draft protocol had not been finalized and that its adoption could have a bearing on the endeavour undertaken by the Ad Hoc Committee. The view was also expressed that the discussion in the Ad Hoc Committee and the drafting of a protocol to the 1979 Convention were distinct processes and should remain so.

10. The only other outstanding issue relates to the proposal concerning the dumping of radioactive material, although no substantive discussion on that matter took place.

11. Finally, it should be emphasized that, although views on the outstanding issues continue to be divergent, without any clear consensus emerging, it was also noted that the important progress achieved, which was reflected in the current text, should be retained. The need to maintain momentum was also underscored. Future discussions should continue to focus on the outstanding issues.

Notes

[a] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* (A/57/37).

[b] For the texts, see ibid., annex IV.

[c] See ibid., annex VI, appendix.

[d] See ibid., annex I.

[e] See A/C.6/53/L.4, annex I.

[f] See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* (A/57/37), annex V, B, proposal A/C.6/56/WG.1/CRP.9.

03-32011 (E) 250403